Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)
	)
School and Libraries Universal Service	) CC Docket No. 02-6
Support Mechanism	)
	)
	)

To: The Commission

COMMENTS OF THE New York CITY BOARD OF EDUCATION

The New York City Board of Education requests the consideration of the following comments regarding the Commission's January 25, 2001 Notice of Proposed Rulemaking and Order on:

SUMMARY

The New York City Board of Education (NYCBOE) provides free primary and secondary education to approximately 1.1 million students and operates more than 1,574 facilities. The Universal Service E-Rate Program has had a dramatic impact on New York City's ability to bring Internet access to students in their classrooms. In 1998, Internet connectivity was merely an item on an instructional "wish list" than an integral part of the classroom. In fact, only a fraction of the more than 48,000 city classrooms were wired to the Internet and the typical public school in our city had only one or two dial-up Internet connections. The possibility of connecting 170,000 computers to the Internet was incomprehensible, as funding to support any project of this size simply did not exist.

The E-Rate program has revolutionized the school environment. Already more than 35,000 classrooms have direct access to the Internet. Students and teachers in every school regularly use the educational resources of the Internet in daily lessons and independent research. Once viewed as a luxury, Internet accessibility for schools in New York City is now an essential component in our educational program.

With all the success of the E-Rate program we are concerned for its viability and longevity. We have taken an aggressive yet responsible approach in building our infrastructure, because we are aware that without a strong E-Rate program the network we have put in place will be beyond our means to support. Even with the generous discounts of the program, this school system is making an unprecedented commitment to technology and allocating more resources than ever on Internet related costs. In addition to paying for an increasing share of undiscounted eligible services and equipment, we must support and fund other ineligible, but necessary costs. Items such as Internet ready computers, electrical power upgrades, asbestos abatement, teacher training and other

management services have tested the limits of what the school system and the city can support. Should the E-Rate program end or be significantly reduced we may be in a situation where we have "built a house that we can no longer afford to live in." Internet access in the classroom would be extremely difficult to maintain in such a scenario.

We agree with the FCC in recognizing the need to refine the E-Rate program and make it more efficient, fair and effective. To this end, we appreciate the opportunity to offer the following comments and recommendations on the proposed changes contained in the FCC Notice of Proposed Rule Making and Order released on January 25, 2002.

Application Process

Eligible Services and Equipment

Considering the rapid changes in technology that can often result in more efficient equipment and services, it is important for both the applicants and the program that we have a more flexible and up-to-date discount eligibility list of services and equipment.

Descriptions of services and equipment are open to considerable interpretation as to their eligibility status. This makes the application process sometimes confusing during the planning, filing and appeal stages. We recommend developing a more comprehensive and dynamic eligibility list with clear guidelines for conditional uses of certain services and equipment.

This list must be kept current and broad enough to minimize the subjective distinctions and challenges that often tie up the review and approval processes. Applicants could continue to apply for generic services and the list would provide a broad list of illustrative examples that fall under each heading. However, this list must not limit choices to school districts and preclude their ability to purchase other up-to-date eligible services and equipment that are not identified on the list. Applicants can enter a specific product into the eligibility database and query for approval and conditional alerts. This reference can be helpful during both the planning and filing stages of the application and hopefully result in fewer challenges and appeals for the applicant and program reviewers.

With regards to the suggestion that an eligibility list be linked to the on-line Form 471, we are unconvinced that this will improve the process. In fact, such a modification may actually create more issues that will require actual human intervention and may impede the applicants' efforts to meet filing deadlines. The degree of technical sophistication and detail required to effectively embed the eligibility list into the on-line application seems beyond the current capacities of the program.

On a related issue we do recommend that the Form 471 on-line application process accept off-line data entry. The current system needs to be modified to accept a data transfer from an off-line document. This will allow the applicant more time and greater flexibility in preparing the Form 471 and minimizes any input errors from a second, timed data-entry. This change in the filing process is particularly important for large applicants with thousands of data items to enter and check.

Americans with Disabilities Act (ADA) Sign- off

The New York City Public Schools, as well as other school systems, are already under legal and moral obligations to be programmatically inclusive of all students. These obligations include and go well beyond the three acts mentioned in the FCC Order. Any specific application "sign-offs" on one or more mandates would make an already difficult filing process more burdensome. Given the duplicative nature of this proposal, we recommend that the ADA or other, similar sign-offs not be included on the application as a requirement for filing.

Specific Services

WANs

- We are concerned with the practice of leasing WANs when used as a means of obtaining telecommunications equipment that would otherwise not be discounted because of a school's poverty level. If not closely monitored, this can become a loophole for abuse. Therefore we are in agreement that, at a minimum, the costs of a WAN lease associated with equipment installation should be amortized over a period of at least five years. This practice would lessen the drain on the priority one funding for services.

Expanded Wireless Service

- Wireless telephone service is now commonplace and costs have dropped significantly. Schools and libraries more frequently use wireless phones in lieu of wired instruments. Wireless services should be as fully eligible, and as easy to file for, as wired telephone services.

Voice Mail

- We recommend that voice mail be included as a service eligible for discounts. Various forms of voice mail are already effectively being used to support the instructional agenda. Also, voice mail services most often come bundled with telephone services and disaggregating them is difficult and rarely results in any significant savings.

The following comments do not address specific items raised in the Notice, but are longstanding concerns that speak to the Commission's goal of improved program operations and efficiency:

Maintenance

As we have stated in earlier comments to the FCC, maintenance is a reasonable and responsible expense that should be discounted annually. To do otherwise may force school systems to invest little or nothing in the protection of valuable telecommunication equipment purchased through E-Rate funds. Therefore, we propose that E-Rate discounts be grouped into three funding priorities rather than the current two. The **first priority** for funding would continue to include telecommunication and ISP services for all discount levels. The **second priority** would be maintenance costs. Again, these would be funded for all discount levels. And the **third priority** would include all internal connections funded according to a modified priority distribution (described in the next section). These modifications to the current funding priority seems appropriate for maintaining stability and getting maximum value on E-Rate investments.

Distribution of E-Rate Funding for Internal Connections

Under existing E-Rate rules and procedures support for Internal Connections has been limited to schools in the high 80% to 90% discount levels. We may have a situation where only the very poorest of schools can be wired for Internet access to the exclusion of all others including those schools in the same district.

We propose a modification of the current rules regarding the distribution of funding for Internal Connections when there is insufficient money to cover the discounts for all applicants. Schools putting in baseline telecommunication wiring and equipment that leads to classroom Internet access for the first time should have priority over any school seeking upgrade or replacement support. First time Internal Connection requests would also be ranked by student poverty, ensuring that the poorest schools would be addressed first. We expect this kind of parallel criterion for priority would result in more classrooms getting connected for the first time while protecting program support for the poorest schools. The intention is to distribute funding to those schools without full classroom access and award those applicants in the order of their need as determined by poverty.

Post Commitment Program Administration

Choice of Payment

It is our understanding that the reimbursement process was originally intended as an interim measure in year one of the E-Rate program. The expectation was that after the first year, any company doing business with schools and libraries would be able to provide up-front discounts and therefore eliminate the need for reimbursement. That original intent was modified to a position where, "applicants and service providers are asked to work it out amongst themselves whether payment will be in full with reimbursement to the applicant or whether the vendor will claim the discounted portion directly from the SLD and the applicant will pay only the undiscounted portion." Unfortunately this modification of the rule is vague and has become meaningless. Certain vendors do not offer the up-front discount to the applicant and there are no provisions to make them do otherwise. While in some cases the applicant may have an option to simply select another vendor, in other cases that is not a viable option.

After four years of the program, we believe that every participating vendor must be willing and able to provide up-front discounting. We do not oppose the reimbursement process *per se* but believe that both parties must agree to the arrangement. It should not be at the sole discretion of the service provider. In New York City's case, one service provider has annually forced us to wait months for millions of dollars in reimbursements. This puts us at a critical disadvantage in maximizing our use of the E-Rate program. Paying 100% and waiting months for reimbursement denies access to funds needed to leverage our other vendor discounts. That is, we use the discounted savings from one vendor to pay the undiscounted charges of another vendor.

While some large service providers have cited their problems in providing discounted billing for E-Rate customers, they fail to acknowledge the detrimental consequences of their practices for the applicant. Businesses that are benefiting significantly from the increased purchases of telecommunication services and equipment by schools and libraries should be more willing to come to a mutually acceptable billing arrangement with their customers.

Equipment Transferability

We agree that the program should not be abused by allowing the frequent and unnecessary transfer of equipment as a loophole for buying more equipment than may otherwise be approved. This kind of irresponsible practice drains resources and gives cause to critics of the E-Rate program.

There will be times, however, when equipment will need to be upgraded or replaced based on the changing infrastructure needs of an eligible school. In those special cases, existing equipment could be used in another location in the school building or in another school, and not needlessly scrapped. To this end, the E-Rate program needs a reasonable equipment life cycle and transferability policy based on the following recommendations.

Equipment Refresh Guidelines

We suggest the establishment of a three-tier equipment life cycle as a means of maintaining healthy networks while controlling the potential abuse of E-Rate funding. An example of such a guide may consist of, but not limited to, the following.

- *Tier one* would include equipment, such as servers, that are frequently upgrade by manufacturers to provide greater capability and more efficiency. This life-cycle tier would be established at a minimum of three years. Replacing this type of equipment would measurably improve the efficiency of the system and provide greater capability to the users.
- *Tier two* would include equipment such as routers and switches that appears to need less frequent manufacturer upgrades. This life-cycle tier would be established for a minimum of 5 years to cover normal wear and important technological improvements.
- *Tier three* would include wiring and PBX systems that should reasonably last for 10 years or more before any upgrade was necessary.

We expect that all equipment purchased with E-Rate discounts would remain in the originally designated school buildings for *the appropriate lifecycle*. However, there are circumstances, such as school closings, moves and consolidations, where moving equipment sooner may be necessary to meet the changing needs of the school's infrastructure. While the described three-tier approach makes sense it may, for implementation reasons, become necessary for the program administrator to consolidate tiers one and two. A compromise on the tier life-cycle timeframes would be required.

Re-Purposing of Equipment

Working telecommunication equipment that is being upgraded according to reasonable life-cycle guidelines should be made available for re-purposing by the school, school district or library. This will further the

underlying intent of the E-Rate program by making the Internet accessible to more students, teachers and library users. Re-purposed equipment can be used within the same school or library or in any eligible district school or library. Priority should be given to the poorest schools but relocating equipment to other discount level schools should be allowable. Relocating an older server from a 90% discount school to an 80% discount school is reasonable and offers continued value for both federal and local investments.

Use of Excess Services

Extended Day Uses of School Facilities
We agree with the decision in the Alaska Order that declared that the community, for the public good, in both normal and emergency circumstances may utilize excess telecommunication services. This extended use should not be limited to entities in remote areas but should be restricted to non-usage sensitive services that do not:

- interfere with the regular education program (the primary use),
- generate profit,
- require additional E-Rate funding

Adult learning centers and public job training programs, that normally take place in school buildings, might be good examples of extended use of these E-Rate services. It would seem wasteful of public funds to establish new Internet access that is parallel to the E-Rate Internet access in the same school building

Schools as Emergency Facilities

The September 11th terrorist attack on the World Trade Center highlighted the key role that public schools can play in dealing with disasters. In the wake of this disaster, a number of our public schools were used to shelter displaced citizens as well as to serve as emergency management centers in the City's recovery efforts. In many areas of the city, telephone service was out for days, weeks, and even months. In some cases, school data circuits and Internet access became vital tools for those trying to survive the crisis and to the city emergency response teams. Our experience in New York City leads us to strongly recommend that school and library telecommunication resources should be made available to prepare for and respond to both man-made and natural disasters.

<u>Appeals Procedure</u>

We agree with the recommendation that the time period for filing appeals be extended from 30 to 60 days. The 30-day time period is often inadequate to prepare and submit a thoughtful appeal. While it is in our interest to file as quickly as possible, additional time will ensure that an applicant's position on a decision is thoroughly and accurately presented.

The SLD should fund successful appeals to the full amount that would have been received had the applicant not been subjected to the appeals challenge. The fact that their approval had to filter through an appeals process should not unfairly prejudice the amount of funding awarded. Funding required to satisfy successful appeals can come from set asides, accruals and, if necessary, from the following year's E-Rate funding. Further, successful priority one appeals should be funded immediately and have priority over any successful priority two awards. This would protect against unnecessary breaks in service to connected schools and libraries.

<u>Independent Audits and Prohibitions on Participation</u>

While we understand and approve the use of audits as a means to preserve the program's integrity and to prevent waste, fraud and abuse, we have concerns regarding their implementation.

The New York City public school system was selected as one of 18 applicants in the E-Rate program audit for year one. We spent months with auditors and many work hours compiling a wide range of information requested. The experience left us with concerns about the procedures for future audits.

- The audit process cannot over burden the often-limited administrative resources of a library or school system. Auditors need to be adequately informed about the E-Rate program and public sector administration. They must make their investigative process as efficient as possible.
- The audit should conclude with an exit interview and a detailed report for the school, district or library to review and, if appropriate, provide a response. The audit should be a learning experience for both the applicants and auditors.
- Schools and libraries should be held accountable for their actions. They should not, however, be responsible for defending vendor non-compliance or the often changing and reinterpreted E-Rate program rules. Too often applicants have been put into a position of planning and filing based upon constantly evolving procedures and rules that are not consistently defined.

> We are opposed to the idea that "suspect" applicants can be forced to submit to a self-funded audit. We believe this will be difficult to implement for both the applicant and the SLD. What grounds will trigger the audit? Can the school or library appeal the order to audit? What happens if the school is not found guilty of any fraud? If additional monitoring and auditing is necessary, we believe they are legitimate operating expenses, and therefore should be funded from the annual E-Rate budget.

Thank you for your serious consideration of our views on this important matter.

Respectfully Submitted,

Joseph Salvati
Director, E-Rate Office
NYCBOE - Division of Instructional and Informational Technology
2 Metrotech Center
New York City Board of Education
Brooklyn, New York 11201